



HIGHLIGHTS OF NEW TAXPAYER RIGHTS

Congress recently passed legislation intended to “reform” the Internal Revenue Service by restructuring the organization and by enhancing taxpayer rights. How significant these changes will be for taxpayers remains to be seen. Some critics argue that at least some of the provisions are not as much a victory for taxpayers as people are led to believe. Here are the highlights of the Internal Revenue Service Restructuring and Reform Act of 1998 and what they may mean for you.

Reorganization. Perhaps the most significant change will take the longest to go into effect. The IRS must now shift its organization from a national-regional-district structure to one organized around taxpayer groups, such as individuals, small businesses, large businesses and nonprofits. Theoretically, this should make it easier for taxpayers to have their particular needs met.

Oversight. The act created an independent Oversight Board to provide a long-term strategic perspective to the IRS for everything from collection procedures to training. In another change, the Taxpayer Advocate, which is supposed to step in on behalf of taxpayers being scrutinized by the IRS, will answer directly to the Treasury Secretary instead of the IRS, and will be able to help taxpayers under a broader range of circumstances.

Burden of proof. The provision that has garnered the headlines is the shifting of the burden of proof in disputes from the taxpayer to the IRS. This provision comes under the general section of the act referred to as Taxpayer Protection and Rights. However, as some critics have pointed out, this shift in burden of proof only occurs in cases that end up in court, which is rare. It does not apply at the audit and appeals level. It also applies only to individuals and small trusts, partnerships and businesses. The burden of proof remains on businesses, trusts and partnerships whose net worth exceeds \$7 million.

Furthermore, the burden of proof shifts only if the taxpayer adheres to three conditions:

- The taxpayer cooperates fully with “reasonable” IRS requests for documents, meetings, witnesses and so on throughout the audit and appeals process.
- The taxpayer maintains required records.

- The taxpayer introduces “credible” evidence.

Some critics contend that IRS agents may actually become more aggressive in an effort to show the taxpayer did not fully cooperate or to question the taxpayer’s “credible evidence.”

Confidentiality. The act extends attorney-client privilege, under certain circumstances, to accountants and enrolled agents authorized to represent their clients before the IRS. However, this privilege does not apply to written communication between the advisor and a corporation regarding tax shelters. It also does not apply under the limitations that have always applied to attorneys, such as the preparation of tax returns.

Audits and compromises. The act contains several provisions that help taxpayers who are in a dispute with the IRS. For example, the IRS will have a more liberal offer-in-compromise policy, and failure-to-pay penalties will be dropped or reduced during installment agreements. The act also gives the IRS an incentive to move the audit process along by requiring the IRS to suspend interest and some penalties if the IRS doesn’t tell the taxpayer about a tax liability within 18 months after the taxpayer files.

Lifestyle audits. The act limits the dreaded “lifestyle” audits, in which the IRS investigates a taxpayer’s spending habits to see if they accurately reflect their reported income.

Innocent spouse relief. This is another part of the act that has received considerable publicity. Divorced or separated spouses will be able to more easily avoid being held financially liable for all or at least part of tax underpayments made by the other spouse.

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